

**A Comparison of the
National Pollutant Discharge Elimination System Permitting Process for
Concentrated Animal Feeding Operations and the
Michigan Agriculture Environmental Assurance Program Livestock System**

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This report compares the current system for permitting concentrated animal feeding operations (CAFOs) under Michigan's water resources protection law with the Livestock System component of the Michigan Agriculture Environmental Assurance Program (MAEAP). It is provided in response to Section 902, 2007 PA 121.

The State of Michigan issues National Pollutant Discharge Elimination System (NPDES) permits to prevent harmful discharges to water quality under Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA).

MAEAP was developed by a coalition of state and federal agencies, conservation and environmental groups, commodity and industry representatives and farmers to aid in understanding environmental regulations and identify pollution protection practices that protect and enhance the quality of natural resources.

Both programs have the goal of limiting the potential for a CAFO to cause environmental harm. However, any comparison of these two programs must begin from an understanding that they are fundamentally different tools for pursuing this goal and hence proceed from fundamentally different foundations and operationally diverge in several areas.

Foundation

The NPDES program is a governmental regulatory program designed to require environmental protection by defining and enforcing specific legal obligations. The organizational structure of the NPDES program—and hence the rights and responsibilities of those affected by the program—is established by statute and rule. Changes to rights and responsibilities established in law can only occur through a defined and public procedure. Interested parties have due process rights with respect to their ability to affect the changes. Finally, the courts are available to compel actions as required by the statute and rules underlying the NPDES program.

The MAEAP is a voluntary, proactive environmental assurance program that encourages producers to engage in cost-effective pollution prevention practices and work to comply with environmental regulations. The program is nonregulatory. MAEAP has established standards under which some farms can be verified. Its foundation is an organizational structure established by a "Partnership Agreement" signed in December of 2000. Through this Agreement, the partners agreed among themselves as to how the MAEAP will operate. Only the partners have an ability to see that the organization continues to operate according to the terms and conditions of the agreement. There are no protections for individuals or organizations that are not party to the agreement. The Agreement requires that the risk assessment for a Livestock System be in the form of an approved Comprehensive Nutrient Management Plan (CNMP) that conforms to USDA Natural Resource Conservation Service (NRCS) Technical Guidance for developing CNMPs, which includes meeting NRCS technical standards for structural conservation practices proposed and all management activities in the CNMP. The public is involved

in the development of those standards. Nothing in the program is construed as surrendering the existing statutory authority of any regulatory agency.

Operations

Each program operates consistent with its design and foundation. The MAEAP program uses an outcome based site specific approach and provides more flexibility to participants to encourage involvement while providing environmental protection.

The MAEAP operates under an organizational structure comprised of committees with defined roles and activities. Committee membership is largely agricultural interests, but includes federal and state agencies, Michigan State University, conservation organizations and industry representation. Livestock System verification is based on the use, understanding and implementation of an approved CNMP, written by a NRCS certified planner, that evaluates whether the risks of agricultural pollution related to the Livestock System have been appropriately addressed in a manner that prevents or minimizes discharges to regulated waters of the State. Monitoring and record-keeping requirements are well documented. A verified operation that fails to meet the performance standard is notified of actions necessary to meet MAEAP verification requirements. Producers who violate state or federal regulations by discharging are subject to Michigan Department of Environmental Quality (DEQ) enforcement. The public involvement in the standard setting process is through the NRCS Michigan Technical Committee. Documents related to farm inspections and verification are kept only by the producer except the actual verification letter and a list of verified farms Part 82, Conservation Practices, of the NREPA.

The organizational and operational structure of the NPDES program is defined by statute, rule, and DEQ documentation. NPDES technical standards are specific and generally applicable to all farms that meet specified qualifying criteria, with the potential for limited tailored decision-making through an individual permit approach. This approach is highly predictable for all interested parties, but flexibility is more limited because there are specific standards that have to be met. Consistent with its regulatory nature, NPDES is geared to developing reliable determinations and documentation as to whether legal obligations are met. There is a standardized inspection structure and format. Monitoring and record-keeping requirements are specific and described in rules and permits. There are clear sanctions for failing to meet legal requirements. These sanctions can be imposed by the DEQ or the judicial system and thus involve strict procedural protections. The NPDES program entails a direct, legal relationship with the producer. The public's interest in that relationship is explicitly recognized. Therefore, the public has a well defined role in what that relationship entails and how it is maintained. There is a formal role for the public in the standard setting process, notice of individual decisions, and ability to contest decisions. All documents are public information except for confidential trade secrets.